Calendar No. 263

98TH CONGRESS, 1st Session } SENATE { REPORT No. 98-165

DAYTIME RADIO BROADCASTERS

JUNE 27, 1983.—Ordered to be printed

MR. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 880]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 880) to amend the Communications Act of 1934 to provide equity to daytime radio broadcasters, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

This bill directs the Federal Communications Commission (FCC) to extend the operating hours of AM daytime radio stations, and to reduce the procedural burdens placed upon such stations when they apply for extended hours or for new licenses.

BACKGROUND AND NEEDS

FCC regulations allow the Nation's 2,300 daytime AM radio stations ("daytimers") to operate from sunrise to sunset. This legislation will allow the daytimers, who comprise half of all AM broadcasters, to operate an additional 2 hours before local sunrise and 2 hours after local sunset. S. 880, as reported, also eliminates some of the regulatory burdens placed upon daytimers.

The restrictions placed upon daytimers are the result of the radio allocation scheme devised by the FCC in the 1930's. This scheme was designed to rapidly develop a nationwide communications system and to extend radio service to rural areas. It did so by utilizing the physical characteristics of AM radio signals.

AM radio stations broadcast two kinds of signals at all times—groundwaves and skywaves. Groundwaves follow the contour of the

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earth and eventually dissipate. The groundwaves provide reliable service and constitute the station's "primary" signal. Skywaves travel up into the atmosphere. During daylight hours, skywaves pass through the atmosphere into space, and provide no usable service. At night, however, the ionosphere acts like a miror and reflects the skywaves back to earth where they can be received.

Daytime conditions do not abruptly change into nighttime conditions—there is a gradual transition period. Nighttime conditions begin to build up 2 hours before sunset and continue to build up until they level off 2 hours after sunset. Only slight changes occur during the night; then nighttime conditions begin a significant decline 2 hours before sunrise that continues until full daytime conditions again appear 2 hours after sunrise.

Nighttime conditions can extend the reach of AM signals by hundreds of miles, but skywaves provide less reliable reception than groundwaves. Skywaves are subject to fading, and vary in strength with changes in factors such as weather, latitude, atmospheric noise and sunspot activity. Therefore, skywave signals provide what is termed "secondary" service. According to the FCC, the nighttime propagation characteristics of AM signals are such that if all AM stations were allowed to operate at night using full daytime power, the result would be "a vast sea of mutually interfering signals interspersed with small islands of service." [1]

The FCC devised an allocation system that relied upon skywaves to rapidly spread radio service throughout the nation. They set aside many channels for use by high-powered "clear channel" stations, which are allowed to provide wide-area skywave service at night.[2] The FCC also allocated numerous channels for full time "regional" AM stations. Only six channels were set aside for full-time use by local stations. When demand for local facilities increased, the FCC licensed hundreds of local stations on the clear channel frequencies. These stations, however, were required to shut down at sunset to protect the clear channel stations' skywave signals from interference.

Vast improvements in communications technology have been made since the 1930's. This Committee has long supported policies that encourage the use of these technologies to provide new and additional communications services. The Committee recognizes, however, that new technologies do not always enhance locally-originated service in many communities across the Nation. Therefore, the Committee believes that it is equally important to support policies that will expand opportunities for existing local service in rural and surburban areas, and will remove outdated regulations.

The FCC's regulations unduly burden the Nation's 2,300 daytime stations and the communities in which they are licensed to serve. Hundreds of communities across the country still have no nighttime or early morning AM radio service. Residents of those communities lack sufficient access to much needed information about local weather and highway conditions. This information is especially vital during winter months, when daytimers' operating hours are most limited. Furthermore, these residents often cannot receive timely announcements of school and factory closings or cancellations of public events. They may

[1] FCC Notice of Inquiry and Notice of Proposed Rulemaking (Docket No. 82-538) paragraph 7.

[2] There presently are 59 class I-A and I-B stations providing clear channel services.

be denied coverage of evening local news, government meetings, or election results. Local school sporting events or other activities often cannot be broadcast to those communities.

Comemnts received by the Committee indicate that this legislation will afford those communities better access to local programming. As the general manager of KBKB radio in Fort Madison, Iowa stated: "Will the clear channel stations in Chicago announce Fort Madison factory closings and weather reports and road conditions if S. 880 is defeated? I doubt it, but I guarantee you KRKB–AM will if S. 880 is adopted."

The FCC's rules also affect the daytimers' ability to afford better local programming. Daytimers cannot compete effectively for audiences and advertising revenues because they often are not able to broadcast during radio's prime time—the "drive time" hours when listeners are most likely to be in their cars.[3] Lower advertising revenues mean that daytimers cannot afford to provide all of the quality programming options that their listeners may desire.

The Committee has determined that many of the restrictions that are imposed upon these daytime stations no longer are justified. This legislation will expand the hours during which daytimers broadcast, as well as eliminate some of the outdated restrictions which hamper better local service. At the same time, the bill is designed to ensure that expanded hours will not unduly impinge upon the operations of other AM stations.

A number of the clear channel radio stations have indicated that they oppose this legislation. They assert that this bill will result in extensive interference because the daytimers will not be required to protect the clear channel stations' skywaves during their extended operating hours. The clear channel stations allege that this will prevent many Americans from receiving the valuable service that their skywaves provide during those hours. They suggest that the Congress should act upon this legislation until the FCC completes a pending rulemaking procedure which will provide less extensive administrative relief for daytime stations (FCC Docket No. 82–538).

The Committee has considered these arguments, but it is not persuaded by them. This bill is designed to prevent daytimers from causing objectionable interference to the signals of other AM radio stations, including those of the clear channel stations. Daytimers may not interfere with the protected groundwave signals of any radio station at any time. Daytimers still must cease operations to protect the skywave signals of the clear channel stations during the dark nighttime hours. Daytimers will be permitted to expand their hours of operation only during the pre-sunrise and post-sunset transition periods, when skywave signals are weaker and less effective.

The Committee recognizes that daytimer operation during the transition periods may cause interference to skywave signals and thereby cut back on the secondary service areas of clear channel stations during those hours. To the extent that this occurs, however, the Committee has determined that it is more important to promote local service during the transition hours than to protect the skywave signals of distant clear channel stations. The Committee also notes that the

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[3] Drive time hours are 6–9 a.m., and 4–7 p.m.

Congress need not wait for the FCC to complete its rulemaking before providing legislative relief for daytime stations and the communities they serve.

LEGISLATIVE HISTORY

S. 880 was introduced by Senator Pressler on March 22, 1983. On May 17, 1983, the Committee issued a public notice requesting interested parties to submit their comments on the bill.[4] Comments on this legislation were received from the American Broadcasting Company, Arizona Western College, Bamco Broadcast Group, Christal Radio Station Representatives, Clear Channel Broadcasting Service, KBKB, KGRL, KHBJ, KXRB, Michigan State University, National Association of Broadcasters, National Public Radio, National Radio Broadcasters Association, Shenandoah Valley Broadcasting Company, Inc., U.S. Department of Commerce, Acting Assistant Secretary for Communications and Information, University of Illinois at Urbana-Champaign, WATU, WCIL, WHA, WKAO and WKDW. The Committee has considered all views presented in recommending the legisislation reported herein.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 20, 1983.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 880, a bill to amend the Communications Act of 1934 to provide equity to daytime radio broadcasters, as ordered reported by the Senate Committee on Commerce, Science and Transportation, June 10, 1983.

S. 880 would extend the hours during which approximately 2,300 daytime AM radio stations could operate, and would revise certain criteria for license renewal. The Federal Communications Commission (FCC) is currently planning to issue rules affecting broadcasting hours of operation, and consequently, it is not expected that enactment of this provision would result in any additional cost to the FCC. To the extent that the changes in licensing procedures would make the application process easier, it is likely that the number of applications would increase, perhaps by 10 percent annually, according to the FCC. However, this is not expected to result in any significant additional cost to the FCC.

[4] The Communications Subcommittee of the Committee most recently held hearings on daytimer and clear channel issues during consideration of S. 622 in the 96th Congress.

This bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

S. 880, as reported, permits daytime broadcasters to expand their hours of operation if interference standards are met, and reduces the procedural burdens these broadcasters face when they apply for additional hours or for new licenses. This legislation will eliminate the FCC's allocation objectives found in section 73.37(e). It will also eliminate the disadvantage placed upon daytimers under the ownership diversification rules when these stations apply for new licenses. This legislation will require the FCC to modify its pre-sunrise service authorization rules and its regulations on the processing of broadcast station applications.

The Committee does not anticipate that this legislation will cause significant additional costs to the FCC, not result in the need for an increase in staff. The FCC has a pending rulemaking on daytime broadcasting (FCC Docket No. 82–538). The Committee believes that this legislation can be implemented using the resources presently allowed to that rulemaking.

SECTION-BY-SECTION ANALYSIS

SECTION 1

The first section of this bill amends section 307(b) of the Communications Act of 1934. This amendment will permit daytime AM radio stations to operate an additional 2 hours immediately preceding local sunrise and 2 hours immediately following local sunset, unless operation during those periods would cause objectionable interference to the protected groundwave signals of other AM radio stations, or would violate treaties or international agreements to which the United States is a party.

Operation during the extended hours

The Committee intends that the FCC shall have sufficient discretion to ensure that the extended hours of operation for daytime stations will not cause objectionable interference to the protected groundwave signals of other AM radio stations.

As originally introduced, this bill would have required the FCC to permit daytimers to operate at full daytime power during the extended hours. The Committee eliminated the provisions that mandated full power, thereby authorizing the FCC to set appropriate power levels for daytime stations during the extended periods. The FCC also may consider requiring daytimers to use directional antennas or other al-

tered modes of operation during extended hours to provide protection for groundwave signals of other AM stations.

The Committee intends that the FCC shall regulate permissible daytime operation during the extended hours by using the standard of "objectionable interference" and appropriate diurnal curves. The term objectionable interference is defined in the FCC's rules at section 73.182. As introduced, S. 880 used the standard of *undue* interference. The Committee replaced that test with the FCC's standard to provide more substantial protection for the groundwave signals of other AM stations. Furthermore, the Committee believes that this legislation can be implemented with greater ease and less expense because the bill adopts a standard with which the FCC and the radio industry have had ample experience.

The Committee intends that the daytimers shall have the initial burden of showing that extended operations will comply with the rules. Once such a showing is made, such operations may be restricted only if an affected station makes a persuasive showing that such operations will in fact cause objectionable interference to its protected groundwave signal.

International considerations

Radio signals do not respect international boundaries. Therefore, over the years, the United States has negotiated with neighboring countries to establish uniform arrangements for clear channel radio broadcasting. S. 880, as introduced, did not address these international issues. To eliminate concern that this legislation would upset these international negotiations, the Committee added provisions which specify that the FCC shall abide by treaties and international agreements in permitting daytimers to extend their operating hours.

SECTION 2(a)

Section 2(a) of the bill adds two new subsections to section 309 of the Communications Act of 1934.

New subsection (j)

Subsection (j) prohibits the FCC from requiring broadcasters who apply for expanded hours or for new fulltime licenses to show that their community is not adequately served or that no FM channel is available for assignment to that community.

This subsection eliminates the allocation policies presently required by the FCC in section 73.37(e) of its rules. The FCC adopted those policies in 1964 to encourage utilization of the FM spectrum and to direct new AM service to unserved or underserved communities. The Committee has determined that these policies are no longer required.

When FM radio was a developing industry, the FCC was justified in creating incentives that would promote the growth of FM. Since that time, FM radio has grown rapidly. It currently is very competitive with AM radio, if it is not the dominant aural service. Such incentives are no longer needed. Furthermore, FCC regulations that were designed to direct new AM service to unserved or underserved communities can be eliminated. After 18 years, the communities that were likely to benefit from this policy already have received first or second AM service.

This subsection should not be construed to repeal section 307(b) of the Communications Act of 1934. The Committee intends that the Commission shall apply new subsection (j) in a manner that is consistent with its obligation to provide fair, efficient, and equitable distribution of radio service to the nation.

New subsection (k)

Subsection (k) eliminates the disadvantage that daytimers face when applying for new fulltime licenses in their communities. The FCC may not award a preference to a competing applicant who currently does not hold a license if the daytimer certifies that it will relinquish its daytime license if it is awarded the new license.

The FCC awards preferences to applicants who currently do not hold licenses in order to promote diversity of ownership. This policy is reversed to the extent that it disadvantages a daytimer who seeks to replace its daytime license with a fulltime license. Thus, daytime broadcasters who are familiar with the needs and interests of their communities will not be held back when they attempt to obtain an unrestricted license that will enable them to better serve those communities. At the same time, this legislation does not hinder the FCC's efforts to prevent undue concentration of ownership.

SECTION 2(b)

Section 2(b) amends section 309 of the Communications Act of 1934 by inserting a new subsection (d). Subsections (d) through (k) of section 309 are redesignated to conform to this amendment.

New subsection (d) makes any application to alter the hours of operation of an AM station a minor change in the facilities of such station. This subsection will reverse the current designation of such changes found in FCC rules at section 73.3571(a).

Thus, proposed changes in the hours of operation will not be subject to section 316 of the Communications Act of 1934, which generally requires notice and the opportunity for a hearing prior to a modification in a station's license. Minor changes typically can be handled by the FCC staff through delegated authority.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

Communications Act of 1934

Section 307 of that Act

ALLOCATION OF FACILITIES; TERMS OF LICENSES

SEC. 307. (a) * * *

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same,

the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same. *The Commission may not restrict the hours of operation of any AM broadcast station during the period which begins 2 hours immediately preceding sunrise and ends 2 hours immediately following sunset in the area in which such station is located, unless such operation during such period would cause objectionable interference to the protected ground-wave signal of a then existing AM broadcast station, or would violate any treaty or international agreement to which the United States is a party.*

(c)—(e) * * *

Section 309 of that Act

ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES

SEC. 309. (a)—(c) * * *

(d) For purposes of subsection (c), any application to alter the hours of operation of a standard broadcast station shall be demed a minor change in the facilities of such station.

[(d)](*e*) (1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation therof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegation of fact or denials thereof shall similarly be supported by affidavit.

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a), it shall proceed as provided in [subsection (c)] *subsection (f)*.

[(e)](*f*) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the find-

ing specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

[(f)](*g*) When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution such temporary operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such temporary operations for a period not exceeding 180 days, and upon making like findings may extend such temporary authorization for additional periods not to exceed 180 days. When any such grant of a temporary authorization is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

[(g)](*h*) The Commission is authorized to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

[(h)](*i*) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 of this Act.

[(i)](*j*)(1) if there is more than one application for any initial license or construction permit which will involve any use of the electromagnetic spectrum, then the Commission, after determining that each such application is acceptable for filing, shall have authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

(A) adopt procedures for the submission of all or part of the evidence in written form;

(B) delegate the function of presiding at the taking of the evidence to Commission employees other than administrative law judges; and

(C) omit the determination required by subsection (a) with respect to any application other than the one selected to paragraph (1).

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant perferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

(B) The Commission shall have authority to require each qualified applicant seeking a sigfinicant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(C) For purposes of this paragraph:

(i) The term "media of mass communications" includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4)(A) The Commission, not later than 180 days after the date of the enactment of the Communications Technical Amendments Act of 1982, shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions

of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

[(j)](*k*) *The Commission may not deny an application for a license to operate a new AM broadcast station or deny an application to expand the hours of operation of such a station under a then existing license solely on the grounds that—*

(1) the area to be served under the license has adequate radio broadcasting service, or

(2) an FM broadcast channel is available for assignment to the area to be served under the application.

[(k)](*l*) *If there is more than one application for any initial license or construction permit, the Commission may not place an applicant at a disadvantage solely on the basis that such applicant is licensed to operate a standard broadcast station with restricted hours in the area to be served under the pending application if such applicant certifies it will relinquish such restricted license if the pending application is approved.*

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